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W.P.No.18542 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.18542 of 2020 and
W.M.P.No.22986 of 2020

M.Ravichandran

... Petitioner

Vs.

The Registrar,
Annamalai University
Annamalai Nagar 608 002,
Chidambaram, Cuddalore District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent made in proceedings in Office Memorandum No.C1-2/01356/2019, dated 24.10.2019 and quash the same and to direct the respondent to regularize the period of petitioner's suspension from 15.02.2019 to 15.10.2019 as duty period and pay the salary for the said period with all consequential service benefits.

For Petitioner : Mr.A.S.Kaizer

For Respondent : Mr.S.Sithirai Anandan, Standing Counsel



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ORDER

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This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent made in proceedings in Office Memorandum No.C1-2/01356/2019, dated 24.10.2019 and quash the same and to direct the respondent to regularize the period of petitioner's suspension from 15.02.2019 to 15.10.2019 as duty period and pay the salary for the said period with all consequential service benefits.

2. Heard Mr.A.S.Kaizer, learned counsel for the petitioner and Mr.S.Sithirai Anandan, learned counsel for the respondent/Annamalai University.

3. The petitioner was initially appointed as Lab Attender on daily wage basis and he was regularised in the year 1991. He was promoted as Junior Assistant on 01.04.2005. In the year 2012, he was promoted to the post of Assistant (now Assistant Section Officer). The petitioner was placed under suspension on 15.02.2019 on the allegation that one Lab



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Attender by name Raman in the examination section has given the petitioner's mobile number to the students to send their academic details and collected money from them for the issuance of certificates. So the petitioner was charged that he was also involved in the collection of bribe from the students through Raman. However, an enquiry was conducted and on completion of the enquiry, the petitioner was found not involved in the collection of money. However, he was given with warning vide official memo dated 15.10.2019 and pursuant to the said order, the suspension was cancelled and was allowed to join duty. However on 24.10.2019, an order has been passed treating the period of suspension of 243 days from 15.02.2019 to 15.10.2019 as leave on loss of pay.

4. The learned counsel for the petitioner submitted that the petitioner was not found guilty for the charges issued against him and in that case, no punishment can be imposed on him. After having found the petitioner is not guilty, the period under suspension ought to have been treated as duty and it should not have been treated as leave on loss of pay.



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It is further submitted that even for the said period during which the petitioner was kept under suspension, no subsistence allowance was paid.

The representation given by the petitioner for payment of subsistence allowance was also not considered.

5. The learned Standing Counsel for the respondent submitted that the petitioner has not challenged the order dated 15.10.2019, through which he was given with severe warning. He has challenged the consequential order dated 24.10.2019 treating his period of suspension as leave on loss of pay.

6. As per the submission of the learned Standing Counsel for the respondent, the petitioner is not entitled to file this Writ Petition without challenging the order dated 15.10.2019. It is further submitted that even the order dated 24.10.2019 is an appealable order and the petitioner is entitled to make an appeal before the Syndicate. The petitioner without invoking the appellate remedy had chosen to file this Writ Petition and hence the Petition is not maintainable.



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7. There is no quarrel on the point that the petitioner was severely warned and the words employed in the order dated 15.10.2019 are as follows:

"The oral and written explanations of Thiru M.Ravichandran, Assistant Section Officer (under suspension) University Office (F-Section) for his involvement in the matter of money received from the students of this University for issue their certificates is not convincing.

*Therefore, Thiru M.Ravichandran, Assistant Section Officer is **warned severely** for his lapses and misconduct and severe disciplinary action be taken against him as per University Rules.*

Further, the suspension of the individual is revoked with immediate effect and he is directed to report for duty immediately.

Orders regarding sanction of leave for his suspension period will be issued after he re-joins duty. "

8. As per the regulations of the respondent University, the following are treated as minor penalties and major penalties. Paragraph



Nos.3 and 4 are extracted hereunder:

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"IMPOSING MINOR AND MAJOR PENALTIES

Minor Penalties

(3) The following minor penalties may, for good and sufficient reasons and as herein after provided, be imposed upon an University employee, namely:-

- a) Censure.*
- b) Fine (in the case of persons for whom such penalty is permissible under these regulations).*
- c) Withholding of increments.*
- d) Withholding of promotion including stoppage at an efficiency bar; and*
- e) Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders.*

Major Penalties

(4) The following Major Penalties may, for good and sufficient reasons and as herein after provided, be imposed upon an University employee, namely:-

- a) Reduction to a lower rank in the seniority list.*
- b) Reduction to a lower post not being lower than to which he/she was directly recruited.*
- c) Reduction to a lower time scale.*
- d) Reduction to a lower stage in the same scale.*



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- e) Compulsory retirement.*
- f) Removal from service of the University; and*
- g) Dismissal from service of the University."*

9. The order dated 15.10.2019 does not show any of the above punishments is being imposed on the petitioner. The appellate remedy is open to the employee only if he was given with penalty which is defined under regulation Nos.3& 4 as enumerated already. In the case in hand, the petitioner has been given with severe warning. Obviously, the respondent University did not opt to punish the petitioner with any penalties as stated in the regulations. When there is no punishment imposed, the petitioner cannot be expected to invoke the appellate remedy and file an appeal before the appropriate authority. Hence, the submission of the learned Standing Counsel for the respondent is that the petitioner cannot challenge the order dated 24.10.2019 without challenging the earlier order dated 15.10.2019.

10. As against the right of appeal as contemplated under regulation VI (21), there is no avenue open for the employees to challenge the



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order passed in regulating the period of suspension. In the impugned order, the period of suspension of the petitioner for 243 days from 15.02.2019 to 15.10.2019 have been treated as leave on loss of pay, despite the petitioner was not imposed with any penalty. In such case, the petitioner has got no other remedy except to challenge the said order by preferring this Writ Petition. The order dated 24.10.2019, is not a speaking order. In the absence of any special regulation as to the regularisation of the period of suspension, the general rules has to be followed.

11. As per Fundamental Rule 54(B), the authority concerned has to pass an order as to the period of suspension in the event of reinstating the suspended employee. If the authority concerned thinks fit that suspension is wholly unjustified, the period of suspension shall be treated as duty. But in the impugned order, no reason has been stated as to why it is justified to treat the period of suspension as loss of pay. If the respondent University thought fit to punish the petitioner by imposing any penalty, they could have very well imposed the same without giving severe



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warning alone. Having done that, it is not appropriate on the part of the respondent to consider the period of suspension as loss of pay without attributing any reason. Since the petitioner has not left with any appellate remedy challenging the impugned order and the same has been passed without any basis and it is in clear contravention to Fundamental Rule 54(B) Sub Clause 3 and 4, I feel it is appropriate to set aside the same.

12. In the result, this Writ Petition is allowed and the order passed by the respondent in Office Memorandum No.C1-2/01356/2019, dated 24.10.2019 is set aside. The respondent is directed to regularize the period of suspension of the petitioner from 15.02.2019 to 15.10.2019 as duty period and pay the salary for the said period with all consequential service benefits. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2024

Index : Yes / No
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